

LEGISLATIVE COUNCIL

MINUTES OF PROCEEDINGS

No. 213

TUESDAY, 8 SEPTEMBER 2020

1. Meeting of Council

The Council assembled at 2.00pm pursuant to order.

The President, Hon Kate Doust, took the Chair.

Prayers and an Acknowledgement of Country were read.

2. Message from His Excellency the Governor — Assent to Bill

The President reported the receipt of a Message from His Excellency the Governor assenting to the following Bill —

21 August 2020 — Message No. 33	Act No.
Public Health Amendment (COVID-19 Response) Bill 2020	No. 33 of 2020

3. Papers

The following Papers were laid on the Table by —

President

Auditor General's Papers —

Managing the Impact of Plant and Animal Pests: Follow-up (Report No. 4)
(August 2020) (Deemed tabled 31/08/2020) 4146

Leader of the House

Regulations —

Children and Community Services Act 2004 (Children and Community Services Amendment
Regulations 2020 G.G. 28/08/2020) 4147

Education and Care Services National Law (WA) Act 2012 (Education and Care Services
National Amendment Regulations 2020 G.G. 28/08/2020) 4148

Response to Reports —

Standing Committee on Estimates and Financial Operations — Local Projects Local
Jobs Program and the Establishment of a Parliamentary Budget Office
(Report No. 82) (Premier) 4149

Rules —

Magistrates Court (Civil Proceedings) Act 2004 (Magistrates Court (Civil Proceedings)
Amendment Rules (No. 3) 2020 G.G. 28/08/2020) 4150

Minister for Environment*Directions* —

Direction from the Minister for Energy under section 111(5) of the Electricity Corporations Act 2005 to Electricity Generation and Retail Corporation (Synergy).....	4151
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Leases —

CALM Lease No. 2991/100 — Between the Conservation and Land Management Executive Body and Native Animal Rescue Broome in Reserve No. 47964.....	4154
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Regulations —

Electricity Industry Act 2004 (Electricity Industry (Licence Conditions) Amendment Regulations 2020 G.G. 01/09/2020).....	4155
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Road Traffic (Administration) Act 2008; Road Traffic (Authorisation to Drive) Act 2008 (Road Traffic Regulations Amendment (Radar Detectors) Regulations 2020 G.G. 01/09/2020).....	4158
Surveillance Devices Act 1998 (Surveillance Devices Amendment Regulations (No. 3) 2020 G.G. 31/08/2020).....	4159

The Parliamentary Secretary to the Deputy Premier on behalf of the Minister for Regional Development*Codes* —

Dangerous Goods Safety Act 2004 (Approved Codes of Practice in accordance with section 20 of the Dangerous Goods Safety Act 2004 (2020) G.G. 28/08/2020	4160
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Regulations —

Construction Industry Portable Paid Long Service Leave Act 1985 (Construction Industry Portable Paid Long Service Leave Amendment Regulations (No. 2) 2020 G.G. 28/08/2020)	4161
Fair Trading Act 2010 (Fair Trading (Prepaid Funerals Code of Practice) Regulations 2020 G.G. 21/08/2020).....	4162
Gene Technology Act 2006 (Gene Technology Amendment Regulations 2020 G.G. 28/08/2020).....	4163
Racing and Wagering Western Australia Act 2003 (Racing and Wagering Western Australia Amendment Regulations 2020 G.G. 04/09/2020).....	4164
Workers' Compensation and Injury Management Act 1981 (Workers' Compensation and Injury Management Amendment Regulations 2020 G.G. 01/09/2020)	4165

Rules —

Workers' Compensation and Injury Management Act 1981 (Workers' Compensation and Injury Management Arbitration Amendment Rules 2020 G.G. 18/08/2020)	4166
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4. Statutes (Repeals and Minor Amendments) Bill 2020

The Minister for Education and Training: To move on the next day of sitting —

That a Bill for “An Act to —

- repeal various obsolete Acts; and
- repeal various obsolete Imperial Acts or provisions of them in so far as they are part of the law of Western Australia; and

- make minor amendments to various Acts.”,
be introduced and read a first time.

5. Local Government (Rules of Conduct) Amendment Regulations 2020 — Disallowance

Hon Aaron Stonehouse: To move on the next day of sitting —

That the *Local Government (Rules of Conduct) Amendment Regulations 2020* published in the *Gazette* on 14 August 2020 and tabled in the Legislative Council on 18 August 2020 under the *Local Government Act 1995*, be and are hereby disallowed. (Tabled paper 4108).

6. Local Government (Rules of Conduct) Amendment Regulations 2020 — Disallowance

Hon Martin Aldridge: To move on the next day of sitting —

That the *Local Government (Rules of Conduct) Amendment Regulations 2020* published in the *Gazette* on 14 August 2020 and tabled in the Legislative Council on 18 August 2020 under the *Local Government Act 1995*, be and are hereby disallowed. (Tabled paper 4108).

7. Local Government (Rules of Conduct) Amendment Regulations 2020 — Disallowance

Hon Charles Smith: To move on the next day of sitting —

That the *Local Government (Rules of Conduct) Amendment Regulations 2020* published in the *Gazette* on 14 August 2020 and tabled in the Legislative Council on 18 August 2020 under the *Local Government Act 1995*, be and are hereby disallowed. (Tabled paper 4108).

8. Suspension of Standing Orders — Special Arrangements for Members Speaking and Voting

The Leader of the House moved, without notice —

That, until the House is adjourned on 22 October 2020, so much of the Standing Orders be suspended so that:

- when called to speak, a Member may speak from a place in the Chamber other than the Member’s own; and
- during a division Members shall gather in the Chamber, which includes the President’s Gallery, and indicate an “Aye” vote by standing and a “No” vote by sitting.

The motion requiring the concurrence of an absolute majority.

Question — put.

The President having counted the Council, and there being an absolute majority present, and no dissentient voice, declared the motion carried with the concurrence of an absolute majority.

9. COVID-19 Response and Economic Recovery Omnibus Bill 2020

The Order of the Day for the further consideration of this Bill, in Committee of the Whole House, having been read.

The President left the Chair.

In Committee

(Hon Simon O’Brien in the Chair)

Clause 1.

Debate resumed.

Clause agreed to.

Clause 2.

Debate ensued.

Clause agreed to.

Clause 3.

Debate ensued.

The Minister for Environment representing the Minister for Planning tabled a list of types of Department of Mines, Industry Regulation and Safety licenses to which clause 11 may apply. (Tabled Paper 4167).

Debate resumed.

Clause agreed to.

Clause 4.

Debate ensued.

Clause agreed to.

Clause 5 agreed to.

Clause 6.

Debate ensued.

The Minister for Environment tabled a list of Acts amended or impacted by the Bill. (Tabled Paper 4168).

Debate resumed.

Clause agreed to.

Clause 7 agreed to.

Clause 8.

Debate ensued.

Clause agreed to.

Clauses 9 and 10 agreed to.

Clause 11.

Debate ensued.

10. Questions Without Notice

Questions without notice were taken.

The Minister for Environment representing the Minister for Police tabled documents in relation to quarantine arrangements under Directions issued by the State Emergency Coordinator, in response to a question without notice asked by Hon Peter Collier. (Tabled Paper 4169).

The Minister for Agriculture and Food, by leave, incorporated into *Hansard* information in relation to progress made on the recommendations in the Auditor General's report entitled *Managing the Impact of Plant and Animal Pests: Follow-up*, in response to a question without notice asked by Hon Peter Collier on behalf of Hon Dr Steve Thomas.

The Parliamentary Secretary to the Minister for Mental Health, by leave, incorporated into *Hansard* information in relation to the *Mental Health Plan 2015-25*, in response to a question without notice asked by Hon Jacqui Boydell.

The Leader of the House representing the Attorney General tabled submissions for the *Animal Welfare and Trespass Legislation Amendment Bill 2020*, in response to a question without notice asked by Hon Peter Collier. (Tabled Paper 4170).

The Parliamentary Secretary to the Minister for Health, by leave, incorporated into *Hansard* information in relation to patients travelling from Albany to Bunbury and Perth for radiation oncology treatment, in response to a question without notice asked by Hon Colin Holt.

The Minister for Regional Development representing the Minister for Forestry tabled the native forest contract of sale template, in response to question on notice 2996 asked by Hon Diane Evers. (Tabled Paper 4171).

The Minister for Regional Development representing the Minister for Mines and Petroleum tabled documents in relation to the most recent Department of Mines Industry Regulation and Safety compliance activities, in response to question on notice 3000 asked by Hon Robin Chapple. (Tabled Paper 4172).

11. COVID-19 Response and Economic Recovery Omnibus Bill 2020

Resumption of consideration of this Bill in Committee of the Whole House (*see item 9 above*).

The President left the Chair.

In Committee

(Hon Dr Steve Thomas in the Chair)

Clause 11.

Debate resumed.

Clause agreed to.

Clause 12 agreed to.

Clause 13.

Debate ensued.

Hon Simon O'Brien moved —

Page 9, line 10 — To delete the line.

Debate ensued.

Amendment — put.

The Committee divided.

Ayes (20)

Hon Martin Aldridge
 Hon Jacqui Boydell
 Hon Robin Chapple
 Hon Jim Chown
 Hon Tim Clifford
 Hon Peter Collier
 Hon Colin de Grussa
 Hon Diane Evers
 Hon Nick Goiran
 Hon Colin Holt

Hon Rick Mazza
 Hon Simon O'Brien
 Hon Robin Scott
 Hon Tjorn Sibma
 Hon Charles Smith
 Hon Aaron Stonehouse
 Hon Dr Steve Thomas
 Hon Colin Tincknell
 Hon Alison Xamon
 Hon Ken Baston (*Teller*)

Noes (11)

Hon Alanna Clohesy
 Hon Stephen Dawson
 Hon Sue Ellery
 Hon Adele Farina
 Hon Laurie Graham
 Hon Alannah MacTiernan

Hon Martin Pritchard
 Hon Samantha Rowe
 Hon Dr Sally Talbot
 Hon Darren West
 Hon Pierre Yang (*Teller*)

Amendment thus passed.

Clause, as amended, agreed to.

Clause 14.

Debate ensued.

Clause — put and negatived.

Clause 15.

Debate ensued.

Hon Nick Goiran moved —

Page 9, line 23 – To delete the line.

Debate ensued.

Amendment — put.

The Committee divided.

Ayes (16)

Hon Martin Aldridge
 Hon Jacqui Boydell
 Hon Jim Chown
 Hon Peter Collier
 Hon Colin de Grussa
 Hon Nick Goiran
 Hon Colin Holt
 Hon Rick Mazza

Hon Simon O'Brien
 Hon Robin Scott
 Hon Tjorn Sibma
 Hon Charles Smith
 Hon Aaron Stonehouse
 Hon Dr Steve Thomas
 Hon Colin Tincknell
 Hon Ken Baston (*Teller*)

Noes (15)

Hon Robin Chapple
 Hon Tim Clifford
 Hon Alanna Clohesy
 Hon Stephen Dawson
 Hon Sue Ellery
 Hon Diane Evers
 Hon Adele Farina
 Hon Laurie Graham

Hon Alannah MacTiernan
 Hon Martin Pritchard
 Hon Samantha Rowe
 Hon Dr Sally Talbot
 Hon Darren West
 Hon Alison Xamon
 Hon Pierre Yang (*Teller*)

Amendment thus passed.

Clause, as amended, agreed to.

Clause 16.

Hon Nick Goiran moved —

Page 10, line 13 – To delete the line.

Amendment — put and passed.

Clause, as amended, agreed to.

Clause 17.

Hon Nick Goiran moved —

Page 10, line 22 – To delete the line.

Amendment — put and passed.

Clause, as amended, agreed to.

Clause 18 agreed to.

Clause 19.

Debate ensued.

Hon Tjorn Sibma moved —

Page 11, after line 24 — To insert:

- (4) The Minister responsible for the relevant enactment is required within 14 days of the Bill receiving Royal Assent to cause a copy of all meetings held and decisions made during the validation period to be published in the *Gazette*.

Debate ensued.

Amendment — put and negatived.

Question, That the clause stand as printed — put and passed.

Clause 20.

Debate ensued.

Hon Nick Goiran moved —

Page 12, line 25 — To delete the line

Debate ensued.

Amendment — put and passed.

Clause, as amended, agreed to.

Clause 21 agreed to.

Clause 22.

Debate ensued.

Clause agreed to.

Clauses 23 to 29 agreed to.

Clause 30.

Hon Alison Xamon moved —

Page 19, line 6 — To delete “section 3; and” and insert:

section 3(a) or (b); and

Amendment — put and passed.

Clause, as amended, agreed to.

Clause 31.

Hon Alison Xamon moved —

Page 23, line 4 — To delete “section 3.” and insert:

section 3(a) or (b).

Amendment — put and passed.

Clause, as amended, agreed to.

Clause 32 agreed to.

Clause 33.

Debate ensued.

Clause agreed to.

Clauses 34 to 43 agreed to.

Clause 44 agreed to.

Clauses 45 to 83 agreed to.

Clause 84.

Debate ensued.

Point of Order

The Minister for Environment representing the Minister for Planning raised the following Point of Order —

I indicate that the Solicitor-General was consulted to ensure that the amendment before us was appropriately constructed. I am advised that we are not changing the powers of the Governor, but we are amending the way in which the function is exercised. The honourable Member is correct in his advice about the Letters Patent relating to the Office of Governor, that clause VIII provides that the Governor is to preside at Executive Council and has been read to require all members to be present in person due to the words “actually present”. This means that Exco meetings cannot currently occur through audio visual means, even if a member is ill or social distancing measures are in place. The honourable Member raised some concerns. I will, Mr Deputy Chair, ask you to leave the chair until the ringing of the bells and to seek advice and a ruling.

Deputy Chair's Ruling

The Deputy Chair ruled as follows —

The point of order relates to whether the *COVID-19 Response and Economic Recovery Omnibus Bill 2020* is a Bill to which s 73 of the *Constitution Act 1889* applies, requiring a referendum to have been held in addition to absolute majorities at the second and third readings of the Bill in both Houses.

Clause 85 of the Bill proposes the amendment of the *Constitution Acts Amendment Act 1899* so as to enable Executive Council meetings to be conducted by remote communication, and purports to amend any Letters Patent relating to the Office of Governor to the extent that there is any conflict.

The question is therefore whether such an amendment to the practice of the Executive Council either:

- (a) “expressly or impliedly provides for the abolition of or alteration in the Office of Governor”: s 73(2)(a) of the *Constitution Act 1889*; or
- (b) “expressly or impliedly in any way affects” s. 50 of the *Constitution Act 1889* (Office of Governor): s 73(2)(e) of the *Constitution Act 1889*.

The proposed amendment does not expressly abolish or alter the Office of Governor. Whether a change to the Letters Patent in relation to the practices of the Executive Council to permit a virtual presence of members is an “implied alteration” or “expressly or impliedly in any way affects” the Office of the Governor is a more difficult question and is a matter of law that is more properly for the courts to determine rather than the Parliament.

This is consistent with the traditional narrow interpretation of s 73 by presiding officers of the Legislative Council.

I therefore rule that this is not a Bill to which s 73 of the *Constitution Act 1889* applies.

Debate resumed.

Question — put.

The Committee divided.

Ayes (17)

Hon Martin Aldridge
 Hon Robin Chapple
 Hon Tim Clifford
 Hon Alanna Clohesy
 Hon Stephen Dawson
 Hon Colin de Grussa
 Hon Sue Ellery
 Hon Diane Evers
 Hon Adele Farina

Hon Laurie Graham
 Hon Colin Holt
 Hon Alannah MacTiernan
 Hon Samantha Rowe
 Hon Dr Sally Talbot
 Hon Darren West
 Hon Alison Xamon
 Hon Pierre Yang (*Teller*)

Noes (12)

Hon Jim Chown
 Hon Peter Collier
 Hon Donna Faragher
 Hon Nick Goiran
 Hon Rick Mazza
 Hon Simon O'Brien

Hon Robin Scott
 Hon Tjorn Sibma
 Hon Charles Smith
 Hon Aaron Stonehouse
 Hon Colin Tincknell
 Hon Ken Baston (*Teller*)

Clause thus agreed to.

Clause 85.

Debate ensued.

Question — put.

The Committee divided.

Ayes (17)

Hon Martin Aldridge
 Hon Robin Chapple
 Hon Tim Clifford
 Hon Alanna Clohesy
 Hon Stephen Dawson
 Hon Colin de Grussa
 Hon Sue Ellery
 Hon Diane Evers
 Hon Adele Farina

Hon Laurie Graham
 Hon Colin Holt
 Hon Alannah MacTiernan
 Hon Samantha Rowe
 Hon Dr Sally Talbot
 Hon Darren West
 Hon Alison Xamon
 Hon Pierre Yang (*Teller*)

Noes (12)

Hon Jim Chown
 Hon Peter Collier
 Hon Donna Faragher
 Hon Nick Goiran
 Hon Rick Mazza
 Hon Simon O'Brien

Hon Robin Scott
 Hon Tjorn Sibma
 Hon Charles Smith
 Hon Aaron Stonehouse
 Hon Colin Tincknell
 Hon Ken Baston (*Teller*)

Clause thus agreed to.

The time under Temporary Order (6) having elapsed, the Chair of Committees put all questions *seriatim* —

Clause 86 agreed to.

Clause 87 agreed to.

Clause 88 agreed to.

Clause 89 agreed to.

Clause 90 agreed to.

Clause 91 agreed to.

Clause 92 agreed to.

Clause 93 agreed to.

Clause 94 agreed to.

Clause 95 agreed to.

Clause 96 agreed to.

Clause 97 agreed to.

Clause 98 agreed to.

Clause 99 agreed to.

Clause 100 agreed to.

Clause 101 agreed to.

Clause 102 agreed to.

Clause 103 agreed to.

Clause 104.

Hon Tjorn Sibma moved —

Page 51, lines 8 to 10 — To delete the lines.

Amendment — put.

The Committee divided.

Ayes (11)

Hon Jim Chown
 Hon Peter Collier
 Hon Donna Faragher
 Hon Nick Goiran
 Hon Rick Mazza
 Hon Simon O'Brien

Hon Robin Scott
 Hon Tjorn Sibma
 Hon Aaron Stonehouse
 Hon Colin Tincknell
 Hon Ken Baston (*Teller*)

Noes (18)

Hon Martin Aldridge
 Hon Robin Chapple
 Hon Tim Clifford
 Hon Alanna Clohesy
 Hon Stephen Dawson
 Hon Colin de Grussa
 Hon Sue Ellery
 Hon Diane Evers
 Hon Adele Farina

Hon Laurie Graham
 Hon Colin Holt
 Hon Alannah MacTiernan
 Hon Samantha Rowe
 Hon Charles Smith
 Hon Dr Sally Talbot
 Hon Darren West
 Hon Alison Xamon
 Hon Pierre Yang (*Teller*)

Amendment thus negatived.

Hon Tjorn Sibma moved —

Page 51, line 17 — To delete “made.” and insert:

made; or
 (c) the *Gazette*.

Amendment — put.

The Committee divided.

Ayes (11)

Hon Jim Chown
 Hon Peter Collier
 Hon Donna Faragher
 Hon Nick Goiran
 Hon Rick Mazza
 Hon Simon O'Brien

Hon Robin Scott
 Hon Tjorn Sibma
 Hon Aaron Stonehouse
 Hon Colin Tincknell
 Hon Ken Baston (*Teller*)

Noes (18)

Hon Martin Aldridge
 Hon Robin Chapple
 Hon Tim Clifford
 Hon Alanna Clohesy
 Hon Stephen Dawson
 Hon Colin de Grussa
 Hon Sue Ellery
 Hon Diane Evers
 Hon Adele Farina

Hon Laurie Graham
 Hon Colin Holt
 Hon Alannah MacTiernan
 Hon Samantha Rowe
 Hon Charles Smith
 Hon Dr Sally Talbot
 Hon Darren West
 Hon Alison Xamon
 Hon Pierre Yang (*Teller*)

Amendment thus negatived.

Question, That the clause stand as printed — put and passed.

Clause 105 agreed to.

Clause 106.

Hon Tjorn Sibma moved —

Page 52, lines 10 to 14 — To delete the lines.

Amendment — put.

The Committee divided.

Ayes (12)

Hon Jim Chown
 Hon Peter Collier
 Hon Donna Faragher
 Hon Nick Goiran
 Hon Rick Mazza
 Hon Simon O'Brien

Hon Robin Scott
 Hon Tjorn Sibma
 Hon Charles Smith
 Hon Aaron Stonehouse
 Hon Colin Tincknell
 Hon Ken Baston (*Teller*)

Noes (17)

Hon Martin Aldridge
 Hon Robin Chapple
 Hon Tim Clifford
 Hon Alanna Clohesy
 Hon Stephen Dawson
 Hon Colin de Grussa
 Hon Sue Ellery
 Hon Diane Evers
 Hon Adele Farina

Hon Laurie Graham
 Hon Colin Holt
 Hon Alannah MacTiernan
 Hon Samantha Rowe
 Hon Dr Sally Talbot
 Hon Darren West
 Hon Alison Xamon
 Hon Pierre Yang (*Teller*)

Amendment thus negatived.

Question, That the clause stand as printed — put and passed.

Long Title.

Hon Tjorn Sibma moved —

Page 1, line 13 — To delete “immediately before.”.

Amendment — put and passed.

Long Title, as amended, agreed to.

The President resumed the Chair.

Bill reported with amendments, and an amendment to the Long Title.

The Minister for Environment representing the Minister for Planning, moved, That the report be adopted.

Report adopted.

The Minister for Environment representing the Minister for Planning moved, That the Bill be read a third time.

The President announced that the Deputy Chair of Committees had certified that this was a true copy of the Bill as agreed to in Committee of the Whole House and reported.

Debate ensued.

Question — put.

The Council divided.

Ayes (25)

Hon Martin Aldridge
 Hon Ken Baston
 Hon Robin Chapple
 Hon Jim Chown
 Hon Tim Clifford
 Hon Alanna Clohesy
 Hon Peter Collier
 Hon Stephen Dawson
 Hon Colin de Grussa
 Hon Sue Ellery
 Hon Diane Evers
 Hon Donna Faragher
 Hon Adele Farina

Hon Laurie Graham
 Hon Colin Holt
 Hon Alannah MacTiernan
 Hon Rick Mazza
 Hon Samantha Rowe
 Hon Robin Scott
 Hon Tjorn Sibma
 Hon Charles Smith
 Hon Dr Sally Talbot
 Hon Darren West
 Hon Alison Xamon
 Hon Pierre Yang (*Teller*)

Noes (2)

Hon Simon O'Brien

Hon Aaron Stonehouse (*Teller*)

Question thus passed.

Bill read a third time and passed.

12. Electoral Amendment Bill 2020

The Order of the Day having been read for the adjourned debate on the second reading of this Bill.

Debate ensued.

Interruption pursuant to order.

13. Members' Statements

Statements were taken.

14. Mutual Recognition (Western Australia) Bill 2020

The President reported the receipt of Message No. 217 from the Legislative Assembly forwarding the Bill for concurrence.

The Leader of the House representing the Premier moved, That the Bill be read a first time.

Question — put and passed.

Bill read a first time.

The Leader of the House representing the Premier moved, That the Bill be read a second time.

The Leader of the House representing the Premier tabled an Explanatory Memorandum relating to the Bill. (Tabled Paper 4173).

Debate stands adjourned.

15. Adjournment

The Council adjourned at 10.09pm until Wednesday, 9 September 2020 at 1.00pm.

Members present during the day's proceedings

Attendance: Present all Members except Hon Michael Mischin and Hon Kyle McGinn.

NIGEL PRATT
 Clerk of the Legislative Council

HON KATE DOUST MLC
 President of the Legislative Council